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October 11, 2013

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BY CERTIFIED MAIL

John T. Donovan, President
J. Donovan & Son, Inc.
Cherry Hill Road
Stockbridge, MA 01262

Certified mail # 7011 1150 0000 0301 2723

Re: 60-Day Notice of Violations and Intent to File Suit Regarding Noncompliance
with Federal Clean Water Act's Industrial Stormwater Discharge Requirements:
29 Cherry Hill Road, Stockbridge, MA 01262

Dear Mr. Donovan:

This office represents Clean Water Action, a national non-profit citizens' organization working for prevention of pollution in the nation's waters, protection of natural resources, creation of environmentally-safe jobs and businesses, and empowerment of people to make democracy work. Clean Water Action has over one million members nationally, more than 50,000 of whom reside in Massachusetts.

We write to give notice that Clean Water Action intends to file a civil action in the United States District Court for the District of Massachusetts under section 505 of the Federal Clean Water Act (the "Act") against J. Donovan & Son, Inc. ("J. Donovan"). The subject of the action will be J. Donovan's unlawful discharge of stormwater from its construction sand and gravel facility on Cherry Hill Road in Stockbridge (the "Facility"). Stormwater runoff from the Facility is discharged to adjacent wetlands and waterbodies that are part of the Housatonic River Watershed.

BACKGROUND

Activities that take place at industrial facilities, such as material handling and storage, are often exposed to the weather. As runoff from rain or snow melt comes into contact with these materials, it picks up pollutants and transports them to nearby rivers, lakes, or coastal waters and tributaries thereto, including but not limited to storm sewer systems, wetlands, and other surface

90 Canal Street Boston, MA 02114-2022

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waters. Stormwater pollution is a significant source of water quality problems for the nation's waters.

The following are *some* of the activities, pollutant sources and pollutants that are present with J. Donovan's mineral mining and dressing processes:

Activity	Pollutant Source	Pollutant
Site Preparation	Road construction, removal of overburden, removal of waste rock to expose the mineral body	Dust, TSS, TDS, turbidity
Mineral Extraction	Blasting activities	Dust, TSS
Mineral Processing	Rock sorting, rock crushing, rock washing, raw material storage, waste rock storage, raw material loading, processing materials unloading, raw or waste material transportation	Dust, TSS, TDS, turbidity, fines, pH, fossil fuel, oil, lime
Other Activities	Sedimentation pond upsets, sedimentation pond sludge removal and disposal, air emission control cleaning	Dust, TSS, TDS, turbidity, pH
Equipment/Vehicle Maintenance	Fueling activities, parts cleaning, waste disposal (oily rags, oil and gas filters, batteries, coolants, degreasers), fluid replacement (including hydraulic fluid, oil, transmission fluid, radiator fluids, and grease)	Diesel/gas fuel, oil, solvents, heavy metals, acid/alkaline wastes
Reclamation Activities	Site preparation for stabilization, fertilizers	Dust, TSS, TDS, turbidity, nitrogen, phosphorous

J. Donovan and Son, Inc.

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Clean Water Action will ask the Court to ensure J. Donovan's future compliance with the Act, assess civil penalties in an appropriate amount,¹ award plaintiff its litigation costs, including attorney and expert fees, and award any other relief the Court deems appropriate. Clean Water Action's complaint will be filed a minimum of 60 days after the postmark date of this letter. This is a formal 60-day notice of intent to sue that is being served pursuant to 40 C.F.R., Part 135.

This notice is being provided by:

Cindy Luppi, New England Regional Co-Director
Clean Water Action
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Boston, MA 02108
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(617) 335-6449 (fax)

Counsel for Clean Water Action in this case is:
Nora J. Chorover
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VIOLATIONS

A. THE REQUIREMENTS OF THE ACT

1. Pollutant Discharges without a Permit are Illegal

The Clean Water Act makes the discharge of pollution into waters of the United States unlawful unless the discharge is in compliance with certain statutory requirements, including the requirement that the discharge be permitted by the federal Environmental Protection Agency ("EPA") under the National Pollutant Discharge Elimination System ("NPDES").

¹ The Act authorizes the Court to assess a penalty of up to \$32,500 a day for each violation up to or including January 12, 2009, *see* 33 U.S.C. § 1319(d), 69 Fed. Reg. 7121 (Feb. 13, 2004), and \$37,500 per day of violation for violations after that date. *See* 73 Fed. Reg. 75340 (Dec. 11, 2008).

2. Sand and Gravel Facilities Must Comply with the EPA's General Industrial Stormwater Permit

In order to minimize polluted stormwater discharges from certain categories of industrial facilities, the EPA has issued a general industrial stormwater permit ("Stormwater Permit").² Sand and gravel mining facilities are subject to the requirements of this Stormwater Permit.³ Sand and gravel facilities which carry on other types of activities also subject to the requirements of the Stormwater Permit must also comply with any sector-specific requirements for such co-located industrial activity.⁴

3. Sand and Gravel Facilities Must Develop and Implement a Stormwater Pollution Prevention Plan ("SWPPP")

An owner or operator (hereafter referred to as "operator") of a facility subject to the requirements of the Stormwater Permit must prepare a SWPPP before being authorized to discharge under the Stormwater Permit. The SWPPP must be "prepared in accordance with good engineering practices"⁵ and, among other things,

- identify potential sources of pollution at the facility;⁶
- describe and ensure implementation of control measures that are technologically available and economically practicable and achievable in light of best industry practice;⁷ and
- set forth specific procedures to assure compliance with effluent limitations and monitoring/inspection requirements of the Stormwater Permit.⁸

4. Sand and Gravel Facilities Must Submit to EPA a Notice of Intent to be Covered by the General Industrial Stormwater Permit By EPA's Established Deadlines

After completing and implementing its SWPPP,⁹ sand and gravel facilities must submit to EPA a Notice of Intent to be covered by the Stormwater Permit. EPA's NOI filing deadline for the 2008 permit was January 5, 2009.¹⁰

² The Stormwater Permit was first issued in 1995 and was reissued in 2000 and 2008. The 2008 Permit does not include significant changes to relevant provisions. See 60 Fed. Reg. 50804 (Sept. 29, 1995); 65 Fed. Reg. 64746 (Oct. 30, 2000); 73 Fed. Reg. 56572 (Sept. 29, 2008).

³ Stormwater Permit, Appendix D, pg. D-4.

⁴ Stormwater Permit, pg. 79.

⁵ Stormwater Permit, pg. 12 (referring to "control measures").

⁶ Stormwater Permit, pgs. 27-28.

⁷ Stormwater Permit, pgs. 12, 28-29.

⁸ Stormwater Permit, pgs. 29-30.

5. Sand and Gravel Facilities Must Comply with the Terms of the General Industrial Stormwater Permit

The Stormwater Permit requires sand and gravel mining facilities to, among other things:

- a. ensure that stormwater discharges meet applicable water quality standards;¹¹
- b. reduce and/or eliminate pollutants to the extent achievable using control measures (including best management practices) that are technologically available and economically practicable and achievable in light of best industry practice;¹²
- c. implement specific best management practices set forth in the General Industrial Permit for mineral mining and dressing facilities;¹³
- d. comply with industry specific effluent limitations for mineral mining and dressing facilities;¹⁴
- e. monitor stormwater discharges for compliance with benchmark limitations and effluent limitations applicable to mineral mining and dressing facilities;¹⁵
- f. monitor stormwater discharges for pollutants for which the receiving water is “impaired” and for which a standard analytical method exists;¹⁶
- g. conduct routine facility inspections, quarterly visual assessments, and annual comprehensive site inspections;¹⁷
- h. report monitoring to the EPA by specified deadlines;¹⁸
- i. submit annual reports to EPA by specified deadlines;¹⁹ and

⁹ Stormwater Permit, pg. 25 (“You must prepare a SWPPP for your facility before submitting your Notice of Intent (NOI) for permit coverage.”).

¹⁰ Stormwater Permit, pg. 9 (unpermitted discharges from the facility will continue to be “unauthorized” unless allowed under the Stormwater Permit). See also 40 C.F.R. §122.28(b)(2)(i) (“A discharger ... who fails to submit a notice of intent in accordance with the terms of the permit is not authorized to discharge”).

¹¹ Stormwater Permit, pg. 16 (“Your discharge must be controlled as necessary to meet applicable water quality standards.”).

¹² Stormwater Permit, pg. 12.

¹³ 65 Fed. Reg. 64830-31; Stormwater Permit, pg. 79-84.

¹⁴ 65 Fed. Reg. 64831-32; Stormwater Permit, pg. 85.

¹⁵ 65 Fed. Reg. 64831; Stormwater Permit, pg. 84-85.

¹⁶ Stormwater Permit, pg. 39.

¹⁷ Stormwater Permit, pgs. 20-25.

¹⁸ 65 Fed. Reg. 64851-52; Stormwater Permit, pg. 41.

¹⁹ Stormwater Permit, pg. 41.

- j. comply with any additional state requirements.²⁰

B. J. DONOVAN'S VIOLATIONS AND DATES OF VIOLATIONS

Clean Water Action's complaint will address the following violations that occurred since January 5, 2009.

1. Discharges of Stormwater from the Facility without a NPDES permit – Exhibit A

J Donovan's violations of the Act's prohibition against unpermitted discharges occurred and are continuing to occur at the Facility each time rain, snow melt or another factor results in industrial stormwater discharges from the Facility to waters of the United States. The days since January 5, 2009 on which rain, snow melt or other factors caused stormwater to be discharged from the Facility to waters of the United States are listed on Exhibit A hereto. Clean Water Action's complaint will also address any non-permitted stormwater discharge violations that occurred or occur between the last date listed on Exhibit A, and the date on which the complaint is filed.

2. Violations That Have Occurred on Each Day Since January 5, 2009²¹

The following violations of the Act have occurred and are continuing to occur at the Facility on each day since January 5, 2009:

- a. Failure to prepare and implement a Stormwater Pollution Prevention Plan that
 - i. identifies potential pollutant sources in accordance with section 5.1.3 of the Stormwater Permit;
 - ii. describes and ensures implementation of control measures as required by section 2.0 of the Stormwater Permit; and
 - iii. sets forth procedures to assure compliance with effluent limits and monitoring/inspection requirements of the Stormwater Permit.
- b. Failure to submit a Notice of Intent to be Covered by the Stormwater Permit.

²⁰ 65 Fed. Reg. 64780, 64857-58; Stormwater Permit, pg. 140-141.

²¹ Clean Water Action believes that the violations set forth in Sections B.2 and B.3 have occurred on each day of the last five years, and not just on rain days. However, to the extent it is determined that rain days are relevant in determining the dates of violations, such rain dates through October 10, 2013 are set forth on Exhibit A hereto. The complaint, when filed, will set forth additional rain dates since October 10, 2013.

- c. Failure to ensure that stormwater discharges from the Facility will not cause or have the reasonable potential to cause or contribute to a violation of water quality standards.
- d. Failure to reduce and/or eliminate pollutants at the Facility to the extent achievable using control measures (including best management practices) that are technologically available and economically practicable and achievable in light of best industry practice.

3. Inspection, Monitoring and Reporting Violations - Exhibit B

J. Donovan's ongoing Inspection and Reporting violations are set forth on Exhibit B, and include the following:

- a. Failure to conduct and submit quarterly benchmark monitoring;
- b. Failure to conduct and submit effluent limit monitoring;
- c. Failure to conduct annual comprehensive site inspections; and
- d. Failure to submit annual reports to EPA.

To the extent that J. Donovan is carrying out any other industrial activity at the Facility which is also subject to the requirements of Stormwater Permit, then J. Donovan's failure to comply with the permit requirements for such co-located activities is also a violation of the Clean Water Act.

CONCLUSION

Clean Water Action believes this Notice of Violations and Intent to File Suit sufficiently states the basis for a civil action. During the 60-day notice period, we would be willing to discuss effective remedies for the violations noted in this letter that may avoid the necessity of litigation. If you wish to pursue such discussions, please have your attorney contact us within the next 20 days so that negotiations may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,



Nora J. Chorover
Attorney for
CLEAN WATER ACTION

J. Donovan and Son, Inc.
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cc: (by certified mail)

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Eric Holder, Attorney General
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Kenneth L. Kimmell, Commissioner
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One Winter Street
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EXHIBIT A

DAYS BETWEEN OCTOBER 10, 2008 AND OCTOBER 10, 2013 ON WHICH STORMWATER FROM FACILITY DISCHARGED TO WATERS OF THE UNITED STATES

October 2008:	10, 17, 26, 27, 29
November 2008:	7, 9, 14, 15, 16, 26
December 2008:	1, 2, 11, 12, 13, 17, 18, 20, 25, 28
January 2009:	1, 7, 8, 9, 12, 29
February 2009:	11, 13, 19, 20, 23, 28
March 2009:	3, 10, 12, 27, 30
April 2009:	4, 5, 7, 11, 12, 21, 22
May 2009:	7, 8, 10, 13, 15, 16, 25, 28, 30
June 2009:	10, 13, 14, 18, 19, 21, 22, 25, 26, 27, 28
July 2009:	1, 2, 3, 8, 12, 13, 17, 18, 19, 22, 24, 25, 27, 30, 31
August 2009:	1, 11, 13, 22, 23, 29, 30, 31
September 2009:	12, 13, 28
October 2009:	4, 8, 10, 11, 14, 19, 25, 29
November 2009:	1, 15, 21, 29
December 2009:	1, 3, 4, 5, 6, 10, 14, 27, 28
January 2010:	3, 18, 26
February 2010:	3, 17, 24, 25, 26, 27
March 2010:	14, 23, 24, 26, 27, 29, 30, 31
April 2010:	9, 17, 26, 27
May 2010:	4, 5, 8, 9, 13, 14, 19
June 2010:	2, 7, 10, 11, 13, 17, 23, 25, 28
July 2010:	11, 15, 18, 20, 22, 24, 25, 26
August 2010:	6, 10, 16, 17, 23
September 2010:	9, 16, 17, 28, 29
October 2010:	1, 2, 5, 6, 7, 15, 16, 28, 29
November 2010:	5, 9, 17, 26
December 2010:	1, 2, 7, 13, 27
January 2011:	8, 12, 13, 19, 22, 22, 25, 27, 27
February 2011:	2, 3, 6, 7, 7, 8, 9, 9, 21, 25, 26, 27
March 2011:	1, 7, 11, 12, 17, 22
April 2011:	2, 5, 6, 6, 13, 14, 14, 17, 18, 20, 23, 24, 26, 27, 28, 28, 29
May 2011:	4, 5, 5, 16, 16, 18, 18, 19, 19, 20, 20, 22, 22, 24, 25, 27
June 2011:	9, 10, 11, 12, 14, 15, 17, 18, 23, 24, 25, 29
July 2011:	4, 7, 8, 14, 19, 26, 27, 30
August 2011:	7, 10, 15, 16, 20, 22, 26, 28, 29
September 2011:	5, 6, 7, 8, 9, 16, 21, 22, 23, 24, 29, 30
October 2011:	2, 4, 13, 14, 15, 20, 25, 27, 28, 30

November 2011:	15, 17, 23, 30
December 2011:	6, 7, 8, 22, 23, 28
January 2012:	2, 12, 13, 14, 17, 18, 22, 24, 27, 28
February 2012:	17, 25
March 2012:	1, 3, 9, 17, 29
April 2012:	2, 9, 22, 23
May 2012:	2, 3, 4, 8, 9, 10, 15, 16, 17, 22, 25, 30, 31
June 2012:	2, 3, 4, 26
July 2012:	1, 13, 14, 15, 20, 22, 23, 26, 27, 28,
August 2012:	5, 10, 11, 15, 28
September 2012:	5, 8, 18, 22, 28, 30
October 2012:	2, 4, 7, 10, 14, 15, 19, 29, 30
November 2012:	13
December 2012:	2, 5, 7, 8, 9, 10, 18, 20, 21
January 2013:	10, 11, 17, 23, 29, 30, 31
February 2013:	19, 20, 27
March 2013:	12, 19, 20, 31
April 2013:	10, 12, 16, 17, 20, 25
May 2013:	1, 8, 9, 11, 16, 21, 22, 23, 24, 25, 29
June 2013:	2, 4, 6, 7, 8, 10, 11, 13, 14, 18, 27, 28, 30
July 2013:	1, 7, 8, 9, 10, 18, 22, 23, 28
August 2013:	1, 9, 13, 22, 26, 27
September 2013:	1, 2, 3, 10, 11, 12, 21, 22
October 2013:	6, 7

EXHIBIT B
J DONOVAN AND SON, INC. – MONITORING, INSPECTION AND REPORTING VIOLATIONS

Type of Violation	Parameters	Beginning Date of Violation	Earliest End Date of Violation
Failure to Conduct Benchmark Limit Monitoring	TSS, Nitrate plus Nitrite Nitrogen	June 30, 2010	The present
Failure to Report Results of Benchmark Monitoring	TSS, Nitrate plus Nitrite Nitrogen	July 31, 2010	The present
Failure to Conduct Benchmark Limit Monitoring	TSS, Nitrate plus Nitrite Nitrogen	September 30, 2010	The present
Failure to Report Results of Benchmark Monitoring	TSS, Nitrate plus Nitrite Nitrogen	October 31, 2010	The present
Failure to Conduct Benchmark Limit Monitoring	TSS, Nitrate plus Nitrite Nitrogen	December 31, 2010	The present
Failure to Report Results of Benchmark Monitoring	TSS, Nitrate plus Nitrite Nitrogen	January 31, 2011	The present
Failure to Conduct Benchmark Limit Monitoring	TSS, Nitrate plus Nitrite Nitrogen	March 31, 2011	The present
Failure to Report Results of Benchmark Monitoring	TSS, Nitrate plus Nitrite Nitrogen	April 30, 2011	The present
Failure to Conduct Benchmark Limit Monitoring	TSS, Nitrate plus Nitrite Nitrogen	June 30, 2011	The present
Failure to Report Results of Benchmark Monitoring	TSS, Nitrate plus Nitrite Nitrogen	July 31, 2011	The present
Failure to Conduct Benchmark Limit Monitoring	TSS, Nitrate plus Nitrite Nitrogen	September 30, 2011	The present
Failure to Report Results of Benchmark Monitoring	TSS, Nitrate plus Nitrite Nitrogen	October 31, 2011	The present
Failure to Conduct Benchmark Limit Monitoring	TSS, Nitrate plus Nitrite Nitrogen	December 31, 2011	The present
Failure to Report Results of Benchmark Monitoring	TSS, Nitrate plus Nitrite Nitrogen	January 31, 2012	The present
Failure to Conduct Benchmark Limit Monitoring	TSS, Nitrate plus Nitrite Nitrogen	March 31, 2012	The present
Failure to Report Results of Benchmark Monitoring	TSS, Nitrate plus Nitrite Nitrogen	April 30, 2012	The present
Failure to Conduct Benchmark Limit Monitoring	TSS, Nitrate plus Nitrite Nitrogen	June 30, 2012	The present
Failure to Report Results of Benchmark Monitoring	TSS, Nitrate plus Nitrite Nitrogen	July 31, 2012	The present
Failure to Conduct Benchmark Limit Monitoring	TSS, Nitrate plus Nitrite Nitrogen	September 30, 2012	The present
Failure to Report Results of Benchmark Monitoring	TSS, Nitrate plus Nitrite Nitrogen	October 31, 2012	The present
Failure to Conduct Benchmark Limit Monitoring	TSS, Nitrate plus Nitrite Nitrogen	December 31, 2012	The present
Failure to Report Results of Benchmark Monitoring	TSS, Nitrate plus Nitrite Nitrogen	January 31, 2013	The present
Failure to Conduct Benchmark Limit Monitoring	TSS, Nitrate plus Nitrite Nitrogen	March 31, 2013	The present
Failure to Report Results of Benchmark Monitoring	TSS, Nitrate plus Nitrite Nitrogen	April 30, 2013	The present
Failure to Conduct Benchmark Limit Monitoring	TSS, Nitrate plus Nitrite Nitrogen	June 30, 2013	The present
Failure to Report Results of Benchmark Monitoring	TSS, Nitrate plus Nitrite Nitrogen	July 31, 2013	The present
Failure to Conduct Effluent Limit Monitoring	pH	March 31, 2011	The present
Failure to Report Results of Effluent Limit Monitoring	pH	April 30, 2011	The present
Failure to Conduct Effluent Limit Monitoring	pH	March 31, 2012	The present
Failure to Report Results of Effluent Limit Monitoring	pH	April 30, 2012	The present

Type of Violation	Parameters	Beginning Date of Violation	Earliest End Date of Violation
Failure to Conduct Effluent Limit Monitoring	pH	March 31, 2013	The present
Failure to Report Results of Effluent Limit Monitoring	pH	April 30, 2013	The present
Failure to Conduct and Document Required Inspections		September 29, 2009	The present
Failure to Submit Annual Report		November 13, 2009	The present
Failure to Conduct and Document Required Inspections		September 29, 2010	The present
Failure to Submit Annual Report		November 13, 2010	The present
Failure to Conduct and Document Required Inspections		September 29, 2011	The present
Failure to Submit Annual Report		November 13, 2011	The present
Failure to Conduct and Document Required Inspections		September 29, 2012	The present
Failure to Submit Annual Report		November 13, 2012	The present